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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,731	03/23/2001	George Harry Hoffman	062834-0179	8181
22428 7590 07/09/2009 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER GORT, ELAINE L	
			ART UNIT 3687	PAPER NUMBER
			MAIL DATE 07/09/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/815,731

Applicant(s)

HOFFMAN ET AL.

Examiner

Elaine Gort

Art Unit

3687

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 4/23/09

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1 and 3-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 1 and 3-5 recite only an insignificant extra-solution activity, or nominal recitation of a patentable subject matter which does not transform an unpatentable principle (e.g. Software) into a patentable process. Mere field-of-use limitations are generally insufficient to render an otherwise ineligible process claim patent-eligible, and "insignificant postsolution activity will not transform an unpatentable principle into a patentable process." Diehr 450 U.S. 191-192. See Bilsky 88 USPQ2d 1394. Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process under section 101. Benson 409 U.S. at 71-72. A general purpose computer is not a particular machine, and thus innovative software processes are unpatentable if they are tied only to a general purpose computer and an "incidental physical limitation, such as data gathering, field of use limitations, and post-solution activity are not enough to convert an abstract idea into a statutory process". Langemyr Appeal 2008-1495, p 20-21.

The only recitation(s) of structure is/are recitation in claim 1 line 3 claiming receiving data "via a receiver unit" which is/are found to be insignificant extra-solution activity.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1, 3-6, 8-11 and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 1 recites the limitation "the store" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the distribution" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the store" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the store" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the distribution" in line 24. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the store" in line 24. There is insufficient antecedent basis for this limitation in the claim.

It is unclear in claim 11 line 3 regarding "comprising:". It appears to be a typo.

Claim 11 recites the limitation "the store" in line 21. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the distribution" in line 25. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the store" in line 25. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-6, 8-11 and 13-15 are rejected, as best understood, under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US Patent 6,901,381) in view of Hafner et al. (US Patent 5,893,076).

Brown et al. discloses the claimed method/system/computer product for providing a supplier or distributor interface, comprising:

receiving data from a store, the data relating to an amount of goods that are manually produced based on a recipe and sold by the stores (for example column 11 lines 15 to column 12 lines 21 discuss a computer system that tracks items or products sold, such as a hamburger meal that is produced manually based on a recipe stored in a file that contains the ingredients to the hamburger meal, for example including the

hamburger patty.); aggregating by one or more computers the data based on one or more supplier and/or distributor parameters (the number of hamburger patties used based on the number of hamburger meals sold are accounted for); receiving a request relating to production of the goods (POS system receives a request for the sale of, for example, a hamburger meal, column 11 line 15+. The sale relates to production of the goods as the good must be produced to be sold.); extracting in response to the request the recipe from a database relevant to the production of the goods and that uses at least one material in the production of the goods (a file contains a recipe for items sold that includes ingredients within the good sold such as a hamburger patty in a hamburger meal, column 11, lines 15+) and an the amount of the material sold to the store (system keeps track of ingredient inventory from the time of receipt from a "particular commissary", column 11, line 61+, which includes the amount of patties sold by the commissary to the store. For example 10 hamburger patties.); calculating by one or more computers based on the recipe an amount of the at least one material that should have been used for the amount of the goods sold by the at least one store (system calculates how many patties should have been used for the hamburger meals sold); calculating by one or more computers a variance between the amount of the material sold to the store and the amount of the material that should have been used based on the recipe for the amount of the goods sold (system calculates the variance when it calculates the difference between the amount of patties sold from the commissary, for example 10, and the amount of material that should have been used based on the recipe for the amount of hamburger meals sold, such as 3 hamburger

meals sold, resulting in 3 patties sold, resulting in a variance of 7 patties left for sale), and transmitting information relating to the variance for use by the store using the material to make the goods (column 12 lines 1+ discuss ability to view the current inventory by the available ingredient for use by the user).

but is silent regarding: where the data is received from a plurality of stores of a supply chain and where the system utilizes a network/Internet.

Hafner et al. teaches that it is known in the art of supply chain systems to receive data from a plurality of stores of a supply chain and to use a networked/Internet displaying computer system (column 3, line 19+) for communicating, tracking sales and ordering products for multiple locations (column 2 line 21).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method/system/computer of Brown et al. with the plurality of stores and networked Internet system as taught by Hafner et al., in order to communicate, track sales and place orders for multiple locations.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 3-6, 8-11 and 13-15 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 5/11/09 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

(i.e., determining a variance that tracks how well a recipe is being followed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Examiner notes that the claim claims a variance between **the amount of material sold to the store**, that is construed to be, for example, the amount of patties provided to the train store from the commissary, column 11 lines 40-67, such as the 10 patties in inventory on the train; and **the amount of material that should have been used based on the recipe**, such as when hamburger meals are sold the system determines based on a recipe that one patty was sold per meal and deducts these items from the starting inventory. For example 10 patties are "sold" to the train from the commissary and 3 hamburger meals are sold, the system calculates a variance by determining that 3 patties should have been used based on a recipe and deducts the 3 sold from the original 10 to get a variance of 7.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on 571/272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/
Primary Examiner, Art Unit 3687

Elaine Gort
Primary Examiner
Art Unit 3687

July 6, 2009

